

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JUNE 22, 2015

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1337

Introduced by Assembly Member Linder

February 27, 2015

An act to amend Section 1158 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL’S DIGEST

AB 1337, as amended, Linder. Medical records: electronic delivery.

Existing law requires certain enumerated medical providers and medical employers to make a patient’s records available for inspection and copying by an attorney, or his or her representative, who presents a written authorization therefor, as specified.

This bill would require a medical provider or attorney, as defined, to provide an electronic copy of a medical record that is maintained electronically, upon request. The bill would also require a medical provider to accept a prescribed authorization form once completed and signed by the patient if the medical provider determines that the form is valid.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1158 of the Evidence Code is amended to read:

1158. (a) For purposes of this section, “~~medical provider and or employer~~” *provider*” means physician and surgeon, dentist, registered nurse, dispensing optician, registered physical therapist, podiatrist, licensed psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, or pharmacist or pharmacy, duly licensed as such under the laws of the state, or a licensed hospital.

(b) Before the filing of any action or the appearance of a defendant in an action, if an attorney at law or his or her representative presents a written authorization therefor signed by an adult patient, by the guardian or conservator of his or her person or estate, or, in the case of a minor, by a parent or guardian of the minor, or by the personal representative or an heir of a deceased patient, or a copy thereof, to a ~~medical provider or employer,~~ *provider*; the ~~medical provider or employer~~ *shall* promptly make all of the patient’s records under the ~~medical provider or employer’s provider’s~~ custody or control available for inspection and copying by the attorney at law or his or her representative.

(c) Copying of medical records shall not be performed by a ~~medical provider or employer,~~ *provider*, or by an agent thereof, when the requesting attorney has employed a professional photocopier or anyone identified in Section 22451 of the Business and Professions Code as his or her representative to obtain or review the records on his or her behalf. The presentation of the authorization by the agent on behalf of the attorney shall be sufficient proof that the agent is the attorney’s representative.

(d) Failure to make the records available during business hours, within five days after the presentation of the written authorization, may subject the ~~medical provider or employer~~ having custody or control of the records to liability for all reasonable expenses, including attorney’s fees, incurred in any proceeding to enforce this section.

(e) (1) All reasonable costs incurred by a ~~medical provider or employer~~ in making patient records available pursuant to this section may be charged against the attorney who requested the records.

(2) "Reasonable cost," as used in this section, shall include, but not be limited to, the following specific costs: ten cents (\$0.10) per page for standard reproduction of documents of a size 8½ by 14 inches or less; twenty cents (\$0.20) per page for copying of documents from microfilm; actual costs for the reproduction of oversized documents or the reproduction of documents requiring special processing which are made in response to an authorization; reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of sixteen dollars (\$16) per hour per person, computed on the basis of four dollars (\$4) per quarter hour or fraction thereof; actual postage charges; and actual costs, if any, charged to the witness by a third person for the retrieval and return of records held by that third person.

(f) If the records are delivered to the attorney or the attorney's representative for inspection or photocopying at the record custodian's place of business, the only fee for complying with the authorization shall not exceed fifteen dollars (\$15), plus actual costs, if any, charged to the record custodian by a third person for retrieval and return of records held offsite by the third person.

~~(g) If a medical record requested pursuant to subdivision (b) is maintained electronically, a medical provider shall, upon request, provide an electronic copy of the medical record in the format requested by the requesting party, or, if that format is unavailable, in another agreed-upon format. If the records requested pursuant to subdivision (b) are maintained electronically and if the requesting party requests an electronic copy of such information, the medical provider shall provide the requested medical records in the electronic form and format requested by the requesting party, if it is readily producible in such form and format, or, if not, in a readable form and format as agreed to by the medical provider and the requesting party.~~

(h) A medical provider shall accept a signed and completed authorization form for the disclosure of health information if both of the following conditions are satisfied:

- (1) The medical provider determines that the form is valid.
- (2) The form is *printed in a typeface no smaller than 14-point type and is* in substantially the following form:

1 AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION
2 PURSUANT TO EVIDENCE CODE SECTION 1158

3 The undersigned authorizes the medical provider designated below to disclose
4 specified medical records to a designated recipient. The medical provider
5 shall not condition treatment, payment, enrollment, or eligibility for benefits
6 on the submission of this authorization.

7
8 Medical provider: _____

9
10 Patient name: _____

11 Medical record number: _____

12 Date of birth: _____

13 Address: _____

14 Telephone number: _____

15 Email: _____

16
17 Recipient name: _____

18 Recipient address: _____

19 Recipient telephone number: _____

20 Recipient email: _____

21
22 Health information requested (check all that apply):

23 ___Records dated from _____ to _____.

24 ___Radiology records: _____ images or films _____
25 reports _____ digital/CD, if available.

26 ___Laboratory results dated.

27 ___Laboratory results regarding specific test(s) only (specify) _____.

28 ___All records.

29 ___Records related to a specific injury, treatment, or other purpose (specify):
30 _____.

31
32 Note: records may include information related to mental health, alcohol or
33 drug use, and HIV or AIDS. However, treatment records from mental health
34 and alcohol or drug departments and results of HIV tests will not be disclosed
35 unless specifically requested (check all that apply):

36
37 ___Mental health records.

38 ___Alcohol or drug records.

39 ___HIV test results.

Method of delivery of requested records:

☐ Mail

☐ Pick up

☐ Electronic delivery, recipient email: _____

This authorization is effective for one year from the date of the signature unless a different date is specified here: _____.

This authorization may be revoked upon written request, but any revocation will not apply to information disclosed before receipt of the written request.

A copy of this authorization is as valid as the original. The undersigned has the right to receive a copy of this authorization.

Notice: Once the requested health information is disclosed, any disclosure of the information by the recipient may no longer be protected under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Patient signature*: _____

Date: _____

Print name: _____

*If not signed by the patient, please indicate relationship to the patient (check one, if applicable):

☐ Parent or guardian of minor patient who could not have consented to health care.

☐ Guardian or conservator of an incompetent patient.

☐ Beneficiary or personal representative of deceased patient.

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